UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

STACY EVANS, in her individual capacity and as representative on behalf of all other similarly situated individuals,	)	
Plaintiff	)	
v.	)	
COMMISSIONER, MAINE DEPARTMENT OF HUMAN SERVICES,	)	*Civil No. 89-0058 P*
Defendant and Third-Party Plaintiff)	)	
v.	)	
LOUIS W. SULLIVAN, M.D., Secretary of Health and Human Services,	)	
Third-Party Defendant	)	

RECOMMENDED DECISION ON THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ON THE THIRD-PARTY DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

This case presents the issue whether the Commissioner of the Maine Department of Human Services, the state agency administering the federal Aid to Families with Dependent Children (``AFDC") program, should have applied the so-called $30 and 1/3 income disregard (``disregard") mandated by 42 U.S.C. ' 602(a)(8)(A)(iv) to the income of an individual added to the income unit of the plaintiff, who had, prior to the addition of that individual, been receiving AFDC benefits. The plaintiff, Stacy Evans, in addition to suing in her own behalf also represents a certified class of persons

residing in the State of Maine after April 1, 1987, ``who, within four months of having received AFDC had an individual with earned income added to the assistance unit and who have not had the `$30 and 1/3' income deduction used in determining whether the 100% test is met." Order of Maine Superior Court (Kennebec County), March 10 1989.[1] The plaintiff seeks declarations that ``an individual is entitled to the benefit of the `$30 and 1/3' disregard whenever the assistance unit of which s/he is a part received AFDC benefits in one of the four previous months," Complaint, Request for Relief & a, and that the ``defendant violated 45 C.F.R. ' 233.20(a)(7)(ii) by failing to apply the `$30 and 1/3' disregard" to the earned income of such an individual in the plaintiff's case, *id.*, Request for Relief & b. The plaintiff also seeks injunctive relief requiring the defendant to: (i) redetermine the plaintiff's eligibility for AFDC by applying the disregard to the individual added to the plaintiff's assistance unit, *id.*, request for Relief & c; (ii) ``amend its policies so that class members properly receive the `$30 and 1/3' deduction," *id.,* Request for Relief & d; (iii) ``recompute the AFDC benefits of all current class members and correct any underpayment of benefits," *id.*, Request for Relief & e; and (iv) ``provide notice to all other class members of their right to apply for and receive a correction of any underpayment of AFDC benefits" caused by the defendant's failure to apply the disregard, *id.*, Request for Relief & f. In addition, the plaintiff seeks attorney's fees.[2] On motion of the defendant, the Commissioner of the Maine Department of Human Services (``Commissioner"), the action was removed to federal court and the Secretary of the Department of Health & Human Services (``Secretary") was joined as a third-party defendant. The third-party complaint states that ``the plaintiffs allege that the State Defendant has promulgated regulations which deny them AFDC benefits

[1] Pursuant to 28 U.S.C. ' 1450 the state court order certifying the plaintiff class, which issued prior to the removal of the action to federal court, remains in full force and effect.

[2] In this recommended decision, I address only the plaintiff's and third-party plaintiff's requests for declaratory and injunctive relief.

in violation of federal laws." Third-Party Complaint & 1. The Commissioner seeks: (i) a declaration that, if the ``State regulations[3] challenged by Plaintiffs' Complaint are invalid, so too are the federal regulations and/or statutes to which the State Defendant is conforming its operation of the AFDC program," Third-Party Complaint, Request for Relief & 1, and (ii) injunctive relief ordering the Secretary ``to cease enforcement of any federal regulation or policy that would require the State to operate its AFDC program in a manner inconsistent with the Court's judgment," *id.*, Request for Relief & 2.

[3] The Maine regulation concerning the application of the disregard is codified in the Maine Public Assistance Payments Manual, 10-144 B C.M.R. Chap. 331(II)(C)(4), and reads in its entirety as follows:

> For individuals found otherwise eligible to receive assistance or who have received assistance in one of the four months prior to the month of application, disregard from the individual's earned income $30.00 plus one-third of his/her remaining income not already disregarded in Items 2 and 3.
>
> a. In AFDC grants with multiple wage earners, each employed member in the assistance grant can receive the $30 plus one-third earned income disregard for up to four consecutive months.
>
> b. The agency will not provide the $30 plus one-third disregard to an individual after the fourth consecutive month it has been applied, unless he/she has not been a recipient of aid for 12 consecutive months. However, should an individual on the assistance grant, through no fault of his own, lose a job prior to the use of the 4 consecutive months of disregard he is entitled to receive an additional four consecutive months of the 30 plus one-third disregard.
> For individuals who receive four consecutive months of the $30 plus one-third disregard, the $30 disregard will be extended for eight additional months.

Before the court are the plaintiff's motion for summary judgment and the Secretary's motion to dismiss the third-party complaint or, in the alternative, for summary judgment.[4] Pursuant to Fed. R. Civ. P. 56(c) the court shall render summary judgment if there remains ``no genuine issue as to any material fact" and if ``the moving party is entitled to a judgment as a matter of law." In this case the material facts are not in dispute and can be briefly summarized.

[4] In support of their respective motions, both the plaintiff and the third-party defendant have submitted memoranda and statements of material facts in accordance with Local Rules 19(a) and 19(b)(1). The defendant and third-party plaintiff joined in the third-party defendant's memorandum but failed, as did the third-party defendant, to make a timely objection to the plaintiff's motion and to file a statement of material facts as to which it is contended that there exists a genuine issue to be tried, all in accordance with Local Rules 19(b)(2) and (c). Thus, I accept as uncontroverted the supported facts stated in the plaintiff's Amended Statement of Material Facts. *McDermott v. Lehman*, 594 F. Supp. 1315, 1321 (D. Me. 1984). The plaintiff has objected to the third-party defendant's motion in accordance with Local Rule 19(c) but has not submitted a statement of material facts as to which it is contended there exists a genuine issue to be tried. I therefore view the supported factual statements in the third-party defendant's Amended Statement of Material Facts as also uncontroverted. *McDermott*, 594 F. Supp. at 1321.

In December, 1988 the plaintiff, an AFDC recipient, married Donald Evans, who is not the father of the plaintiff's child. Federal law requires states to count the income of a resident stepparent in determining the assistance unit's continued AFDC eligibility. 42 U.S.C. ' 602(a)(31). The Commissioner, who is responsible for implementing and administering the AFDC program in Maine,[5] determined that, in adding the plaintiff's husband to her AFDC grant, the plaintiff was no longer eligible for continuing AFDC benefits. In so finding, the Commissioner did not apply the disregard. Had he done so the plaintiff would have continued to be eligible for AFDC benefits.

[5] AFDC operates through a cooperative federal and state program. Maine participates in this program and as a condition of reimbursement must administer its program pursuant to a state plan approved by the Secretary that is in conformity with federal standards. 42 U.S.C. ' 602. Maine has adopted a state plan for administering its AFDC program pursuant to 22 M.R.S.A. ' 3741. The Maine Department of Human Services, headed by the Commissioner, administers the Maine program.

The issue before the court is whether the disregard should have been applied to Donald Evans' income (and that of others similarly situated as they relate to the plaintiff class) before determining the continued eligibility of the assistance unit. The legal issue is one of statutory construction. I therefore first examine the language, history and purpose of the statute to determine the intent of Congress. *Commonwealth of Massachusetts v. Lyng*, No. 89-1302, slip op. at 13 (1st Cir. Jan. 9, 1990) (1990 LEXIS App. 251), citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984). If such an analysis does not reveal Congress' intent, then I must construe the agency's interpretation of the statute as evidenced by its regulations.[6] *Chevron*, 467 U.S. at 843-45.

The section of the Social Security Act that provides for the earned income deduction known as the ``$30 and 1/3 disregard" requires that a state agency:

> disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to (I) the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph, plus (II) one-third of the remainder thereof . . . .

42 U.S.C. ' 602(a)(8)(A)(iv). The statute further provides that the state agency shall not apply this income deduction in any given month to:

> any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so

[6] The plaintiff has not challenged the federal regulations but rather Maine's policy in interpreting such regulations. The Commissioner and the Secretary both take the position that Maine's policy reflects a correct interpretation of the regulations. This case, therefore, requires a construction of the federal regulations and a determination of whether Maine's policy is consistent or inconsistent with the meaning of those regulations.

> specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), *unless the persons received aid under the plan in one or more of the four months preceding such month* . . . .

42 U.S.C. ' 602(a)(8)(B)(ii)(I) (emphasis added).[7] The question remains whether the last sentence of ' 602(a)(B)(ii)(I) refers to all of the members of an assistance unit or only the specific individuals who receive AFDC. The plaintiff claims that the term ``persons'' applies to the assistance unit and that, therefore, the disregard should have been applied to Donald Evans' income. The Secretary, on the other hand, reads the term ``persons'' to mean the individual who received AFDC so that Donald

[7] The persons listed in ' 602(a)(8)(A)(ii) are: ``any child or relative applying for or receiving aid to families with dependent children, or . . . any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination . . . .'' 42 U.S.C. ' 602(a)(8)(A)(ii).

Evans would have to have received AFDC in one of the four prior months in order to be entitled to have the disregard applied to his income.[8]

The particular issue before the court is generated by the requirement contained in the Omnibus Budget Reconciliation Act of 1981 (``OBRA"), Pub. L. 97-35, 95 Stat. 357 (1981), that the income of a resident stepparent be included in determining the AFDC eligibility of an assistance unit.

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[8] The Secretary also argues that the plaintiff's case is moot because under new federal and state regulations Donald Evans does not fit the definition as ``an essential person" and therefore cannot be part of the assistance unit. For the purposes of deciding the motions before the court, I find that there is no issue of material fact as to Donald Evans' membership in the Evans' assistance unit. The complaint alleges and the Commissioner admits that Evans was added to the plaintiff's AFDC grant, Complaint and Answer & 19, and that, if the Commissioner had applied the disregard, the plaintiff would have received AFDC benefits, Complaint and Answer & 22. Moreover, the Secretary has admitted that, because of the plaintiff's marriage to Evans, ``Mr. Evans' income *and needs* have to be considered in determining the plaintiff's continuing AFDC eligibility." Third-Party Defendant's Amended Statement of Material Facts & 4 (emphasis added). Thus, it would appear that the Secretary has identified Evans as an ``essential person" within the meaning of the new regulations. 54 Fed. Reg. 3448 (1989) (``essential persons" are not eligible for AFDC in their own right, but their needs are taken into account in determining the benefits payable to an AFDC recipient in the family because they are considered essential to the well being of such recipient). I do not, therefore, determine on these facts that the plaintiff's case is moot. Moreover, as the plaintiff correctly notes, other members of the certified class may still be adversely affected by the policy even if the named plaintiff's case were determined to be moot. *See Franks v. Bowman Transportation Co.*, 424 U.S. 747, 752-57 (1976).

42 U.S.C. ' 602(a)(31). Thus, the legislative history of the original disregard provision added to the AFDC program by the Social Security Amendments of 1967, Pub. L. No. 90-248, 1967 U.S. Code Cong. & Admin. News (81 Stat) 923, 987-98, does not directly address the application of the disregard to the income of a resident stepparent. The general purpose underlying the original legislation, however, was to provide an incentive for AFDC recipients to take employment. S. Rep. No. 744 [hereinafter ``Senate Report"], 90th Cong., 1st Sess. 159 (1967), *reprinted* in 1967 U.S. Code Cong. & Admin. News 2834, 2994-95. Because the provisions were ``designed to get people off AFDC rolls, not put them on," Senate Report, 1967 U.S.Code Cong. & Admin. News at 2996, the disregard was to apply ``only if for any of the past 4 months the *family* was eligible for a[n AFDC] payment," Senate Report, 1967 U.S. Code Cong. & Admin. News at 2995 (emphasis added). Thus, in determining whether an individual would be eligible for the disregard, Congress focused on the AFDC eligibility during any of the previous four months of the *family* rather than the individual.

As stated above, however, the legislative history of the original disregard provision does not address the situation at issue here where the agency is considering the continued eligibility of an AFDC family after the addition of a new member whose income is deemed to be available to the assistance unit as required by the OBRA amendment codified at 42 U.S.C. ' 602(a)(31). The original legislation, therefore, must be read together with the relevant OBRA provisions.

Under OBRA the state agency is required, in making the eligibility determination for any month, to take into consideration certain income of the dependent child's resident stepparent. The purpose of this provision was to ``prevent situations in which children receive AFDC even while they are an integral part of a family which may have substantial income." S. Rep. No. 139, 97th Cong. 1st Sess. 507 (1981), *reprinted* in 1981 U.S. Code Cong. & Admin. News 396, 773. Unfortunately this phrase does not provide very much guidance in determining whether the disregard should be applied

to the income of a stepparent who joins an assistance unit which has received AFDC in one of the four previous months. OBRA also contained provisions limiting the application of the disregard to four months[9] as a means of reducing the number of families staying on welfare while ``provid[ing] a useful buffer to those trying to readjust to employment." S. Rep. 139, 1981 U.S. Code Cong. & Admin. News at 769.

The stepparent income provision contains no reference to the disregard and the amendments limiting the application of the disregard contain no language precluding its application to the income of the stepparent if the assistance unit to which he or she was added had received AFDC in one of the four preceding months.

In the absence of a clear directive from Congress, I now consider the interpretation of the Department of Health & Human Services, the federal agency charged with administering the AFDC program, as set forth in its regulations. *Chevron*, 467 U.S. at 843-45. The preamble to the 1982 regulations implementing the OBRA amendments indicates how the agency interpreted the OBRA amendments' application to the disregard:

> The $30 and one-third can not be used in establishing initial eligibility of *an assistance unit (unless the unit received AFDC in one of the prior 4 months)*, but after it has been applied to an individual for 4 consecutive months, is unavailable to that individual until the expiration of a 12-month period during which the individual has not been an AFDC recipient.

47 Fed. Reg. 5662 (1982) (emphasis added). The preamble thus reveals that the Secretary interpreted the term ``persons" as used in 42 U.S.C. ' 603(a)(8)(B)(ii)(I) as meaning ``assistance unit." *See*

[9] In 1984 Congress extended the availability of the ``$30 disregard" for a 12-month period while retaining the limitation of the 1/3 remainder disregard to four months. 42 U.S.C. ' 602(a)(8)(B) as amended by Deficit Reduction Act of 1984, P.L. 98-369, ' 2623, 98 Stat. 494, 1134 (1984).

Bradstreet v. Commissioner of Department of Human Services, 522 A.2d 1313, 1315 (Me. 1987). This interpretation is consistent with the codified regulation, 45 C.F.R. ' 233.20(a)(7)(ii), which describes the ``pre-test" or ``100 percent test" insuring that the disregard is not used to establish eligibility. That section provides:

> [T]here will be a preliminary step to determine whether *the assistance unit in which [the applicant] is a member* is eligible without the application of any AFDC provisions for the disregard . . . . This *preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application*.

45 C.F.R. ' 233.20(a)(7)(ii) (emphasis added). This provision of the regulations reflects the agency's intent to apply the disregard to all members of the assistance unit and is consistent with the Congressional intent that the disregard should not have the effect of qualifying more families for AFDC. *See Chevron*, 467 U.S. at 845.

The Secretary argues that 45 C.F.R. ' 233.20(a)(11)(i)(D)[10] evidences an agency interpretation of the statute as requiring the application of the disregard to an individual's income only if that individual has received AFDC in one of the previous four months. This section, however, has to be read in the context of the other sections which are part of the regulatory framework and also has to be viewed in the light of the agency's own explanation of how the OBRA amendments affect the

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[10] This section provides:

> For purposes of eligibility determination, the State must disregard from the monthly earned income . . . of each individual whose needs are included in the eligibility determination:
>
> > (D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded . . . of an individual who received assistance in one of the four prior months.

20 C.F.R. ' 233.20(a)(11)(i)(D).

disregard.[11] In this context, I cannot read this section to preclude the application of the disregard to the income of an individual who is part of an assistance unit which has received AFDC in one of the four prior months.

[11] *See* 45 C.F.R. ' 233.20(a)(7)(ii) and the preamble to the regulations implementing OBRA at 47 Fed. Reg. 5662 (1982).

Next, the Secretary claims that the Evans' *assistance unit* was not receiving AFDC in any of the four prior months because only the plaintiff and her child were recipients. Stated otherwise, the Secretary identifies the plaintiff's assistance unit after her marriage to Donald Evans as a new unit, rather than the same unit to which a new member has been added. He further asserts that Evans sought to use the disregard to establish eligibility. The Secretary's argument is belied by his own characterization of the procedural history as a *redetermination* of eligibility and by the regulations. The regulations require a redetermination of eligibility ``after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible." 45 C.F.R. ' 206.10(a)(9)(ii). The redetermination is distinguished from an ``application" which is defined as ``the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the state agency) his desire to receive assistance." 45 C.F.R. ' 206.10(b)(2). Thus, in order to determine whether the recipients, the plaintiff and her child, were still eligible for AFDC the state agency had to reevaluate the income from the recipient's *assistance unit* to which Donald Evans had been added. A new assistance

unit was not formed; rather the income from the unit which had received AFDC in at least one of the four months preceding the report was merely reevaluated.[12]

I conclude, therefore, that the term ``persons'' in 42 U.S.C. ' 602(a)(8)(B)(ii)(I) must mean assistance unit. In so concluding, I agree with the reasoning of the Maine Law Court in *Bradstreet*:

> By interpreting ``persons'' as referring to the assistance unit, the disregard operates as a buffer during a period of financial adjustment in accordance with the intent of Congress. Such a result is accomplished without violating the avowed purpose of preventing

[12] I also note that the Secretary's analysis is inconsistent with 45 C.F.R. ' 233.20(a)(13) which addresses recovery of overpayments. This section defines the term ``overpayment'' as follows: ``Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible.'' *Id.* The regulations require recovery of:

> an overpayment from (1) the assistance unit which was overpaid, or (2) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (3) any individual members of the overpaid assistance unit whether or not currently a recipient.

45 C.F.R. ' 233.20(a)((13)(B). This section makes clear that a state agency is to view an assistance unit as a constant. The addition or reduction in the number of members of the unit or in unit income may affect *eligibility*, but does not constitute the formation of a new unit.

families from becoming eligible for AFDC solely by operation of the disregard.

Bradstreet, 522 A.2d at 1315-16. I further conclude that the federal regulations support such an interpretation.

For the foregoing reasons, I recommend that the plaintiff's motion for summary judgment and requests for declaratory and injunctive relief be ***GRANTED*** and that the third-party defendant's motion for summary judgment be ***DENIED***. I also recommend that the court grant summary judgment *sua sponte* in favor of the Commissioner as to that part of his third-party claim against the Secretary which seeks injunctive relief ordering the Secretary to cease enforcement of his department's AFDC policy to the extent that it requires the Maine Department of Human Services to operate Maine's AFDC program in a manner inconsistent with the court's judgment. *See Quaker State Oil Refining Corp. v. Garrity Oil Co.*, 884 F.2d 1510, 1513 (1st Cir. 1989).

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 6th day of February, 1990.

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David M. Cohen
United States Magistrate